

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

UNITED STATES OF AMERICA	)	CRIMINAL NO.: 4:11-413-RBH
	)	
	)	
vs.	)	
	)	
BENEDICT GUTHRIE OLBERDING	)	

**FINAL ORDER OF FORFEITURE AS TO BENEDICT GUTHRIE OLBERDING**

1. On March 22, 2011, a federal grand jury returned an Indictment charging Defendant Benedict Guthrie Olberding (“Olberding”, “Defendant”), with three counts of bank fraud, in violation of 18 U.S.C. § 1344. Pursuant to Rule 32.2(a), Fed.R.Crim.P., the Indictment contained a forfeiture allegation which provided that upon Olberding’s conviction, certain property enumerated therein, or equivalent substitute assets, would be subject to forfeiture to the United States pursuant to, *inter alia*, 18 U.S.C. § 982(a)(2), providing for forfeiture of criminally-derived proceeds, and 28 U.S.C. § 853(p), providing for forfeiture of substitute assets. Pursuant to Rule 32.2(b)(1)(A), the forfeiture allegation also sought a money judgment against Olberding and his codefendant, Joseph Robert Guernsey (“Guernsey”), based upon the amount of criminally-derived proceeds of the scheme.

2. On October 28, 2011, Olberding pled guilty to Count 3 of the Indictment, pursuant to a plea agreement which included forfeiture cooperation provisions. Based upon Olberding’s guilty plea and other matters of record, the court determined that the fraud scheme to which Olberding pled guilty was a continuing fraud, which generated

gross criminal proceeds of \$1,000,000, and that such proceeds are subject to forfeiture pursuant to 18 U.S.C. § 982(a)(2).

3. On January 23, 2013, pursuant to a seizure warrant issued by United States Magistrate Judge Kaymani D. West, the FBI seized \$1,000,000 (hereafter, the “Seized Funds”) from Account xxxxxx5563, with BB&T, for proposed forfeiture as substitute property. Account xxxxxx5563 is a business bank account in the name of Southern States Mortgage Company, Inc., on which Benedict Guthrie Olberding and his wife, Brenna Olberding, have signature authority.<sup>1</sup>

4. The United States subsequently entered into a “Consent Settlement Agreement Relating to Forfeiture and Restitution” (hereafter, “Consent Agreement”) with Benedict Guthrie Olberding, Brenna Olberding, and Southern States Mortgage Company, Inc., which proposed to resolve the forfeiture and restitution issues in Olberding’s case. See ECF No. 155. The terms of the Consent Agreement were approved by the court, and were incorporated into the Preliminary Order of Forfeiture and Olberding’s criminal judgment. ECF Nos. 160, 167.

5. Under the terms of the Consent Agreement, after entry of this Final Order of Forfeiture, \$145,000 of the \$1,000,000 in Seized Funds is to be returned to Southern States Mortgage Company, Inc. (subject to the provisions of 31 U.S.C. § 3716 (the “Debt Collection Improvement Act of 1996”)), leaving a remaining balance of \$855,000. The government has agreed to transfer the amount of court-ordered restitution, to wit,

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<sup>1</sup> At the time of the offense of conviction, Benedict Guthrie Olberding was the President of Southern States Mortgage Company, Inc. Ownership of the company was subsequently transferred to Brenna Olberding on December 9, 2012, through an assignment and transfer of ownership of the company’s stock.

\$614,154.37, to the Clerk of Court, from the remaining balance of the Seized Funds, to be paid to the victims pursuant to the order of restitution. The remaining amount, \$240,845.63, is to be forfeited to the United States.

6. Beginning on April 12, 2013, and running at least 18 hours per day through May 11, 2013, as required by Supplemental Rule G(4)(a)(iv)(c), Fed.R.Civ.P., the United States published notice of the forfeiture on the government website “www.forfeiture.gov”, a website of general circulation within the United States and the State of South Carolina, notifying any person claiming interest in the forfeited property that they must file a Petition within sixty (60) days of the notice for a hearing to adjudicate the validity of any alleged legal interest in the Seized Funds. ECF No. 181.

7. No claims or petitions to the Seized Funds were filed, and the time to file such claims and petitions has passed as provided for by the provisions of 21 U.S.C. § 853(n); therefore, all claims to such property are forever foreclosed and barred.

8. The court has previously determined the government has established the requisite nexus between the said property and the offense for which the Defendant has been convicted.

Accordingly, it is hereby ORDERED, ADJUDGED AND DECREED:

1. \$240,845.63 of the Seized Funds, and all right, title and interest in and to such property, is hereby forfeited to the United States of America. Pursuant to 21 U.S.C. § 853(n)(7), clear title in and to \$240,845.63 is vested in the United States of America, its successors and assigns, and no other right, title or interests exists therein. All claims to the \$240,845.63 are forever foreclosed and barred and the said property shall be disposed of by the United States in accordance with law.

2. The United States Marshals Service ("USMS"), which is the custodian of the Seized Funds, is authorized and directed to issue a check to the Clerk of Court for the U.S. District Court in the amount of \$614,154.37, which funds shall be used for payment to the victims pursuant to the terms of the restitution order of the Criminal Judgment in this case. Under such terms, \$521,391.87 is to be paid to CHL Mortgage Pass-Through Trust 2007-4, and \$92,762.50 is to be paid to Countrywide Home Loans, Inc. ECF No. 167, p. 3.

3. USMS is directed to return \$145,000 of the Seized Funds to Southern States Mortgage Company, Inc., by electronic funds transfer payment from the United States to the "Joseph M. McCulloch, Jr., Attorney at Law, IOLTA Account."

4. The court shall retain jurisdiction to resolve disputes which may arise and to enforce and amend this Order as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

5. The Clerk, U.S. District Court, shall provide one (1) certified copy of this Order to the United States Attorney's Office.

AND IT IS SO ORDERED.

s/R. Bryan Harwell  
R. BRYAN HARWELL  
UNITED STATES DISTRICT JUDGE

Florence, South Carolina

June 19, 2013